



Defense Logistics Agency **INSTRUCTION**

DLAI 4140.09
Effective: July 3, 2024

OPR: DLA Logistics Operations (J3), Disposal Management Branch (J345)

SUBJECT: Trade Security Controls (TSC) for Transfers of Export-Controlled Department of Defense (DoD) Personal Property to Parties Outside DoD Control

REFERENCES: Refer to Enclosure 1

1. PURPOSE:

a. Assign responsibilities for DoD TSC measures within DLA for transfers of DoD property outside of DoD control in accordance with Department of Defense Instruction (DoDI) 2030.08 (Reference (a)).

b. Reinforces DoD demilitarization (DEMIL) requirements in accordance with (IAW) DoDI 4160.28 (reference (b)) and DoD Manual (DoDM) 4160.28 (Reference (c)).

c. Reinforce DoD material disposition provisions IAW DoDM 4160.21 (Reference (d)).

d. Establish essential TSC measures to prevent the transfers of DoD export-controlled personal property to unauthorized individuals, entities, or countries.

2. SUMMARY OF CHANGES: Provide updates of DoD and DLA TSC policies throughout and adds clarity of the J34 Board of Appeals process including the process for adjudicating appeals of negative TSC determinations including personal property transfer reviews and Joint Certification Program (JCP) access. This issuance must be reviewed in its entirety.

3. APPLICABILITY: This instruction applies to:

- a. All DLA activities and personnel.
 - b. DoD export-controlled personal property under DLA management and control, and DLA TSC assessments of export-controlled personal property done at the request of DoD components for personal property to be transferred outside of DoD control regardless of transfer authority.
 - c. TSC assessment requests from other federal agencies to include the exchange of assets previously owned by DoD (Reference (e)).
4. DEFINITIONS: See Glossary
 5. POLICY: It is DLA policy that:
 - a. TSC measures will be implemented, as appropriate, in coordination with programs established by the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)); the Defense Security Cooperation Agency (DSCA); the Defense Technology Security Administration (DTSA); the Directorate of Defense Trade Controls (DDTC) at the Department of State (DOS); the U.S. Immigration and Customs Enforcement at the Department of Homeland Security (DHS); the Bureau of Industry and Security at the Department of Commerce (DOC); and the Office of Foreign Assets Control at the U.S. Department of the Treasury (USDT).
 - b. DoD Components and DLA activities must apply appropriate TSC measures to prevent unauthorized release, export, or transfer of DoD export-controlled personal property. These measures shall be applied and maintained throughout the entire lifecycle of DoD export-controlled property and all acquisition phases (including pre-solicitation activities), sustainment, and ultimate disposal.
 - c. DLA activities will report known or suspected violations of U.S. export laws and regulations for investigation in accordance with DoD Directive 5106.01 (Reference (l)) and DoDI 5505.2 (Reference (m)), and the International Traffic in Arms Regulations (ITAR) and EAR. Failure to report such violations to the appropriate authorities may result in criminal or civil penalties.
 6. RESPONSIBILITIES: See Enclosure 2.
 7. PROCEDURES: See Enclosure 3.
 8. INFORMATION REQUIREMENTS: DLA Form 1822 End Use Certificate (EUC) provides information requirements for conducting TSC assessments. All transmissions of DLA Form 1822 must be conducted in accordance with the Privacy Act (Reference (q)).

9. **RELEASABILITY**: UNLIMITED. This Instruction is approved for public release. It is available on the internal DLA Issuances website.

10. **INTERNAL CONTROLS**: The DoD TSC Program Office will conduct joint quarterly customer cyclic reconciliations to correct discrepancies associated with TSC transactions. This will ensure accurate property accountability, mitigate, reduce, and prevent the risk of theft, fraud, or abuse of transferred government property. The DoD TSC Program Office will coordinate with the applicable sales representatives on all EUC correction requests to ensure transfers comply with applicable export-control regulations (the ITAR, EAR and References (f) and (h)).

11. **EXPIRATION DATE**: DLA will reissue or cancel this instruction by the fifth anniversary of its effective publication date. If not, it will automatically expire.

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Enclosure(s)

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ENCLOSURE 1: REFERENCES

- (a) DoD Instruction 2030.08, "Implementation of Trade Security Controls (TSC) for Transfers of DoD Personal Property to Parties Outside DoD Control," February 19, 2015, as amended
- (b) DoD Instruction 4160.28, "DoD Demilitarization (DEMIL) Program," November 30, 2022
- (c) DoD Manual 4160.28, "Defense Demilitarization," date varies by volume
- (d) DoD Manual 4160.21, "Defense Materiel Disposition," October 22, 2015
- (e) DoD Instruction 2040.02, "International Transfers of Technology, Articles, and Services," March 27, 2014
- (f) Title 22, USC
- (g) Title 22, CFR
- (h) Title 50, USC
- (i) Title 15, CFR
- (j) Title 31, CFR
- (k) Title 41, CFR
- (l) DoD Directive 5106.01, "Inspector General of the Department of Defense (IG DoD)," April 20, 2012, as amended
- (m) DoD Instruction 5505.02, "Criminal Investigations of Fraud Offenses," August 29, 2013, as amended
- (n) DoD Instruction 4140.01, "DoD Supply Chain Materiel Management Policy," March 6, 2019
- (o) Title 48, CFR
- (p) Federal Acquisition Regulation, current edition (FAR)
- (q) Defense Federal Acquisition Regulation Supplement, current edition (DFARS), DFARS Change June 23, 2022
- (r) Title 5, USC
- (s) 10 USC § 130c, Nondisclosure of information: certain sensitive information of foreign governments and international organizations, January 6, 2017
- (t) 10 U.S. Code § 130, Authority to withhold from public disclosure certain technical data, December 23, 2016
- (u) DLA Instruction 8180.01 "Records and Information Management", September 27, 2023
- (v) DoD Instruction 8910.01, "Implementation of the Paperwork Reduction Act", December 5, 2022

ENCLOSURE 2: RESPONSIBILITIES

1. DIRECTOR, DEFENSE LOGISTICS AGENCY (DLA): The Director, DLA, under the authority, direction, and control of the USD(AT&L) and the ASD(A&S), will:

a. Maintain the DoD TSC Program Office (in accordance with Reference (a)) in coordination with the ASD(A&S) and the DoD Component heads.

b. Designate in writing a DoD TSC Program Office manager to support the intent of reference (a) for the control and oversight of the DoD TSC Program in coordination with ASD(A&S) and the DoD Component heads to:

(1) Develop supplemental TSC implementation guidance for DoD Components to include the processes for EUC submission, assessment, and subsequent approval or denial.

(2) Maintain the DoD TSC training program.

(3) Maintain the DoD TSC website as a resource for DoD Components.

(4) Conduct TSC assessments for DLA and other DoD Components as requested.

(5) Make initial TSC qualifications decisions based on evaluation of risk made by the DLA Office of Inspector General (OIG): Trade Security Controls Assessment Office (TSCAO)(See Policy, 5 (h) above) during the TSC assessment process, which includes approving and denying EUC submissions.

(6) Coordinate with the DoD DEMIL Program Manager to incorporate DoD TSC training into the DoD DEMIL Program Course.

(7) Be responsible for ensuring the DLA Privacy Office is notified in a timely manner of any changes in the location, purpose, categories of individuals, categories of records, routine uses, authorities, retention and disposition of records, exemptions, and categories of sources of records covered by the DLA Privacy Act System of Records Notice (SORN), S640.45, "End Use Certificates."

(8) Co-Chair the DoD TSC Working Group Meetings in conjunction with DTSA.

(9) Propose and develop supplemental TSC implementation guidance for DoD components, including the requirement that Privacy Act clauses like those found in Title 48, CFR (Reference (o)) and the and DFARS (Reference (p)) be added to contracts involving the use of federal exchange/sale authorities, and specifying that all transmissions of DLA Form 1822 must be conducted in accordance with the Privacy Act.

(10) Develop supplemental TSC procedures for transfers outside the United States.

c. Maintain DLA's OIG: TSC Assessment Office.

2. DIRECTOR, DLA LOGISTICS OPERATIONS (J3): The Director will maintain the DoD TSC Program Office to support the intent of the reference (a) for management, control, and oversight of the DoD TSC Program in coordination with ASD(A&S) and the Heads of the DoD Components.

3. EXECUTIVE DIRECTOR, DLA LOGISTICS POLICY AND STRATEGIC PROGRAMS (J34): The Director, J34, will:

a. Appoint members to the J34 Board of Appeals responsible for adjudicating negative TSC determinations including personal property transfer reviews and JCP access.

b. Assist the DoD TSC Program Manager with the TSC denial process and the DLA J34 Board of Appeals.

(1) The DoD TSC Program Manager denying requests for the TSC property transfers based on risk indicators during the TSC assessment process from the DLA OIG: TSC Assessment Office (TSCAO) will include information regarding how applicants may submit a request for appeal to the DLA J34 Board of Appeals.

(a) The DoD TSC Program Manager or other designated DLA official may deny transfers of TSC material for the following risk indicators such as, but not limited to:

(1) Applicants prior conviction for a violation of U.S. export controls law.

(2) Applicants prior conviction for a crime suggesting a lack of business integrity, such as embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property.

(3) Minimum age of 21 as determined by DoD.

(4) Applicant's refusal to provide evidential matter requested by DLA OIG: TSC Assessment Office to add clarity for recommendation process.

4. CHIEF, JOINT CERTIFICATION PROGRAM (JCP) (J34A): The Chief, DLA Joint Certification Program, will:

a. Ensure all U.S. applicants who apply for access to the JCP indicate whether the application request is in connection with potential DLA procurement opportunities.

b. Applicants who intend to inquire about potential DLA procurements are required to obtain a favorable TSC assessment from the DLA OIG or J34 Board of Appeals prior to receiving JCP certification, in the same manner as DoD export-controlled property.

5. DIRECTOR, DLA ACQUISITION (J7): The Director, DLA Acquisition will incorporate appropriate terms and conditions into DLA contracts to ensure contractors handle DoD exports-controlled property in their custody; consistent with Reference (a) and IAW subparts 245.604225.7901, and 204.73 of Reference (p).

6. DIRECTOR, DLA OFFICE OF THE INSPECTOR GENERAL (OIG): The Office of the Inspector General, will:

a. In the United States conduct TSC assessments on all DoD export-controlled property for the DoD TSC Program Office as requested.

b. Maintain the DLA's OIG: TSC Assessment Office to conduct TSC assessments on all DoD export-controlled property for the DoD TSC Program Office as requested. Additionally, the OIG will conduct TSC assessments on all technical data, technology, and software transfers in support of DLA procurements.

(1) Provide initial TSC assessments and recommendations to the DoD TSCAO for TSC qualification determinations based on risk indicators discovered during the TSC assessment process IAW applicable standards published by USD(A&S); DSCA; DTSA; DDTC at DOS; the U.S. Immigration and Customs Enforcement at DHS; the Bureau of Industry and Security at the Department of Commerce (DOC); and the Office of Foreign Assets Control at USDT.

(2) Develop additional supplemental procedures and guidance for conducting TSC assessments as required. In cases of successful appeals from the J34 Board of Appeals, review completed evidential matter packages for appropriateness for post-sale/post transfer audit/investigation.

c. Maintain the DLA TSC Enforcement and Investigative Program.

(1) Conduct TSC sale/post transfer evaluation and investigation as required.

(2) Provide TSC related support and investigated information to other federal law enforcement agencies as required.

(3) Manage and maintain EUC records IAW DLAI 8080.01, Records and Information Management (Reference (t)).

7. DIRECTOR, DLA DISPOSITION SERVICES: The Director, DLA Disposition Services, will:

a. Incorporate TSC measures in all surplus personal property sales invitations for bid (IFB), including scrap, and usable property contracts. The term “surplus property” and the subcategories “scrap” and “usable” property are defined in References (c) and (d).

b. For usable and scrap sales in the U.S., TSC assessments are only required on the initial purchaser receiving title of the property from DoD, unless DoD will share in the proceeds generated by the resale of the property from the initial purchaser. In those cases where DoD will share in the proceeds generated by the resale of the property from initial purchasers, the IFBs must contain provisions for TSC assessments to be completed on the subsequent purchaser.

(1) All IFBs for sales in the U.S. must notify prospective purchasers that they must submit a DL Form 1822 and that the information collected in TSC evaluation process is subject to the Privacy Act (Reference (q)) and failure to submit the requested information or receive a favorable recommendation from the TSCAO will be grounds to deny the sale. If TSC assessments are conducted on any subsequent purchasers the IFB must contain provisions requiring the initial purchaser to protect information in accordance with the Privacy Act (References o-q).

(2) Sales Contracting Officers shall submit completed DL Form 1822s from purchasers to the TSCAO for processing.

(3) Ensure DoD surplus personal property designated for sales in the U.S. is not released from DLA Disposition Services’ control either physically or in accountability, until purchasers have obtained a favorable TSC assessment conducted by the TSCAO.

c. For sales of DoD personal property including usable property and scrap at locations outside of the U.S., DLA Disposition Services will follow the applicable combatant commander policies for vendors vetting on FAR based contracts. Additionally, DLA Disposition Services sites will ensure compliance with DoD DEMIL policy for certification and verification of property requiring DEMIL or mutilation before being released from DoD control. The sales contract shall contain provisions requiring the purchasers to comply with U.S. Export Laws and Regulations. A statement of intent (SOI) or End Use Certificate (EUC) shall also be required for the purchaser to identify any country where the material will be exported. The sale will be denied if the purchaser is exporting to a country that is on the Department of Commerce (DOC) or Department of State Denied Parties List.

(1) Only DEMIL “A” usable property may be sold at locations outside the U.S. (References (c) and (d)).

(2) For the sale of DEMIL “A” scrap outside the U.S. the sales contract shall also have provisions requiring the purchaser to comply with the scrap warranty and render all material to

scrap before resale. Waivers of the scrap warranty should only be granted in limited circumstances and must be documented in writing after a legal office review.

(3) For Mutilation as a Condition of Sale/DEMIL as a Condition of Sales contracts, provisions must be in place to comply with all DEMIL policies, including the requirement for the buyer to verify and certify that DEMIL/Mutilation has been completed in accordance with applicable DEMIL policy (References (c) and (d)). Property must not be released from DLA Disposition Services control, until DEMIL or mutilation is complete. Execute written agreements with federal agencies and other organizations with federally approved excess personal property programs receiving USML or CCL personal property pursuant to References (d) and (k), that require the recipient to handle the property in compliance with this policy.

ENCLOSURE 3: PROCEDURES

1. Within the United States, the requesting agency, military contractor or representative notifies each potential transferee that a EUC DLA Form 1822 must be completed and submitted to the DoD TSC Program Office. Potential transferees must be notified that EUCs are used to determine the potential transferee's eligibility to receive the personal property and ensure that personal property recipients comply with the terms of sale, transfer, or donation regarding the property's use. Potential transferees must be notified that the EUC will be reviewed and evaluated by the DoD TSC Program Office and must be approved in order for the transfer of the personal property to occur.
2. Military sales vendors or service representatives must provide completed EUC packets to the DoD TSC Program Office.
3. DoD TSC Program Office logs each individual packet into the TSC EUC property tracker for auditability purposes.
4. The DoD TSC Program Office reviews each EUC packet to ensure the package is administratively correct before submitting to DLA OIG: TSCAO for assessment.
5. The TSCAO conducts individual TSC assessments, after receiving each EUC packet from the DoD Program Office.
6. Upon completion of the TSC assessment, TSCAO presents DoD TSC Program Office with either a favorable assessment or denial recommendation.
7. DoD TSC Program Office notifies the appropriate military sales vendor or service representative if the DoD TSC Program Office approve or disapprove of the transfer based on the TSCAO's findings.
8. In cases of denials buyers may submit written appeals to DLAJ3BoardofAppeals@dla.mil.
9. Members of the J34 Appeals Board will vote whether to grant approved TSC assessments or to deny the TSC assessment. The DLA Executive Director, J34 Logistics Policy and Programs will act as the final approving authority

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

AECA	Arms Export Control Act
CCL	Commerce Control List
CFR	Code of Federal Regulations
DDTC	Directorate of Defense Trade Controls
DEMIL	Demilitarization
DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
DHS	Department of Homeland Security
DOC	Department of Commerce
DoD	Department of Defense
DoDD	DoD Directive
DoDI	DoD Instruction
DODM	DOD Manual
DOS	Department of State
DSCA	Defense Security Cooperation Agency
DTSA	Defense Technology Security Administration
EAR	Export Administration Regulation
FAR	Federal Acquisition Regulation
IFB	Invitation for Bid
ITAR	International Traffic in Arms Regulations
JCP	Joint Certification Program
OIG	Office of Inspector General
TSC	Trade Security Controls
TSCAO	Trade Security Controls Assessment Office
USC	United States Code
USD(A&S)	Under Secretary of Defense for Acquisition and Sustainment
USML	United States Munitions List
USDT	United States Department of Treasury

PART II. DEFINITIONS

CCL. Defined in part 772 of the EAR. The CCL is at supplement No. 1 to part 774 of the EAR.

DEMIL. Defined in Reference (b).

Disposition. The process of reutilizing, donating, selling, ultimately disposing, or otherwise transferring DoD personal property.

DLA Form 1822. A form used by the DLA OIG for conducting TSC assessments in order to determine transferee eligibility to receive DoD export-controlled personal property.

DoD Export-Controlled Personal Property. DoD personal property that is controlled for export on the ITAR or the EAR. These items (including articles, items, technical data, technology, and software) are identified on the USML, CCL, or are subject to the EAR, e.g., "EAR99."

DoD Personal Property. As defined in reference (a) all DoD property (including technical data, technology, and software, except real property (land, improvements, buildings, etc.) and government records. DoD excess, surplus, and foreign excess personal property are a subset of DoD personal property defined in DoD Manual 4160.21, "Defense Material Disposition" October 22, 2015.

Export. Defined in subpart 120.17 of the ITAR, for ITAR-controlled items, and in subpart 772.1 of the EAR, for EAR-controlled items.

Federally Approved Excess Property Programs. Any non-federal entity authorized to receive excess DoD personal property under federal statute.

Foreign Person. Defined in subpart 120.16 of the ITAR.

Ineligible Transferees. Individuals, entities, or countries, excluded as the result of a TSC assessment conducted pursuant this instruction.

Excluded from federal programs by the General Services Administration as identified in the System for Award Management at <https://www.sam.gov/portal/public/SAM/>, or deemed ineligible by any federal agency in accordance with Subpart 9.4 of CFR, Title 48.

Subject to denial, debarment, or other sanctions pursuant to export control and related laws, regulations, or orders administered by the DOS, DOC, DHS, or USDT. The DOS, DOC, DHS, and USDT name these entities, individuals, and countries in the Federal Register and at the following websites:

DOS DDTC Debarred Parties website

https://www.pmdtc.state.gov/ddtc_public/ddtc_public?id=ddtc_kb_article_page&sys_id=8a89528adb3cd30044f9ff621f961931

DOS DDTC Embargoed Countries website

<http://www.pmddtc.state.gov/embargoedcountries/index.html>

DOC Denied Persons List website

<http://www.bis.doc.gov/dpl/thedeniallist.asp>

DOC Unverified List website

<https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/unverified-list>

ITAR. Defined in parts 120 through 130 of Title 22, CFR also known as the International Traffic in Arms Regulations.

Technology. Defined in DoD Instruction 2040.02.

Transfer. The sale, lease, loan, grant, exchange, trade, barter, release, or donation from the DoD to another person or entity outside of DoD control. Transfers can include, but are not limited to: military sales, surplus property sales, foreign excess property sales or donations, research collaboration, exchanges, consulting arrangements, co-development and co-production arrangements, exhibits, meetings and symposia, technical missions, employment, dissemination of patent information, release of technical reports and technical data, illicit acquisition of technology or articles, and access through ownership or substantial interest in a business or other organization.

TSC. The controls on export or other transfers, DEMIL, or mutilation of DoD personal property established by the EAR, ITAR, AECA, United States Code (USC) Title 22, USC Title 50, CFR Title 31, CFR Title 41, and any similar controls established by the DHS.

TSC Assessment. A pre-award assessment made by DoD, usually by DLA, verifying that the destination, end-user, and end-use of controlled DoD personal property conform to U.S. export control requirements.

TSC Measures. Measures designed to preclude the improper or unauthorized transfer of DoD export-controlled personal property.

USML. Defined in parts 121 of Title 22, CFR also known and referred to in this instruction as the US Munitions List.

USML Technical Data. Defined in the ITAR.

U.S. Person. Defined in the ITAR.

United States. Defined in the ITAR.